Abstract

The revised Abstract complying with MPEP § 608.01 (b) is attached.

Claims 1-2, 4, 6-8, 10-16, 20, 23-24, 27, 30-31, 33, 35-37, and 39-43 rejected under 35 U.S.C. §102(e)

The Examiner has rejected Claims 1-2, 4, 6-8, 10-16, 20, 23-24, 27, 30-31, 33, 35-37, and 39-43, as anticipated, under § 102 (e), by the Luciano or the Yacenda reference. In the Office Action, the Examiner states the following:

> "Luciano or Yacenda teaches a lottery pooling management system that comprises a participant interface, the participant interface being in communication with a participant computer, the participant interface being configured to allow pool participants to participate in one or more lottery pools, each lottery pool having one or more sets of lottery numbers; a lottery interface, the lottery interface being in communication with one or more lotteries and the participant interface, the lottery interface being configured to ascertain drawing results with the one or more sets of lottery numbers in the one or more lottery pools; and a notification interface, the notification interface being configured to alert pool participants about activity in the one or more lotteries, the status of the lottery pool, and the compared drawing results."

Applicants respectfully disagree with the Examiner's interpretation of the Luciano and Yacenda references.

MPEP §2131 states that to anticipate a claim by any of 35 U.S.C. § 102 (a), (b), or (e), the reference must teach every element of the claim. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. V. Union Oil Co. of California,* 814 F. 2d 628, 631, 2 USPQ2d 1051, 1053, (Fed.Cir. 1987). "The identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

Claim 1 of the present invention reads in pertinent part;

"a participant interface, the participant interface being in communication with a

participant computer, the participant interface being configured to allow *pool participants* to participate in one or more *lottery pools*, each *lottery pool* having one or more sets of lottery numbers;

a lottery interface, ...to compare the drawing results with the one or more sets of lottery numbers in the one or more *lottery pools*; and

a notification interface, ... the notification interface being configured to alert *pool participants* about activity in the one or more lotteries, the status of the *lottery pool*, and the compared drawing results." *Emphasis added.*

Luciano et al.

The Examiner describes the Luciano reference as having "a participant interface ... configured to allow pool participants to participate in one or more lottery pools, each lottery pool having one or more sets of lottery numbers." (Office Action, page 3, lines 4-6). Applicants respectfully disagree with this interpretation of the Luciano reference. Luciano teaches an electronic lottery system (abstract, line 1). Whereas, the current invention claims a "lottery pool, [where] individuals generally get several lottery tickets together to create a larger pool of potentially winning numbers for a group," (Background paragraph [0005], page 3, lines 8-11) and is not a system for facilitating a lottery.

Luciano teaches a lottery type game in which a single player interacts with the lottery system as an individual. ("In accordance with the principles of the invention, an electronic gaming system provides for the independent operation of lottery draws and replays of lottery draws for *a player* in an entertaining fashion." Col. 1, lines 28-31). Luciano does not teach or disclose forming a group of players for the joint undertaking of pooling their lottery tickets to increase the chance of the group winning the lottery. It is respectfully submitted that Luciano teaches only a lottery system, i.e. a system by which lottery numbers are generated in real time at a player's request.

Luciano teaches the terms "player *pool*" (Col. 9, line 14) as well as "prize *pool*" (Col. 4, lines 4-20) to refer to various collections of funds available to pay lottery winnings. However, as

stated earlier, Luciano does not teach a "lottery pool" as that term is used in the current invention. Both sources are correct uses of the term *pool*, but the meaning in Luciano is not equivalent to the claim language in the current invention.

Applicants submit that Luciano does not disclose each and every element in the present invention as required by 35 U.S.C. § 102 (e), specifically, the "lottery pool" element as claimed in independent claims 1, 15, 23, and 30 of the current invention. Applicants respectfully request that the Examiner cite with specificity where the reference teaches the "lottery pool" element or in the alternative, withdraw the § 102 (e) rejection of anticipation by Luciano and allow the independent claims. Since claims 2-8, 10-14, 16, 20, 24, 27, 31-37, and 39-43, depend on the independent claims, allowance of the independent claims should result in the allowability of the dependent claims.

Yacenda

The Examiner describes the Yacenda reference as having "a participant interface ... configured to allow pool participants to participate in one or more lottery pools, each lottery pool having one or more sets of lottery numbers." (Office Action, page 3, lines 4-6). Applicants respectfully disagree with this interpretation of the Yacenda reference. Yacenda teaches an on-line lottery system ("The present invention relates to a system and a method for facilitating state lottery games with a screening and a verification function." Abstract, lines 1-3). The current invention claims a "lottery pool, [where] individuals generally get several lottery tickets together to create a larger pool of potentially winning numbers for a group." (Background paragraph [0005], page 3, lines 8-11). Yacenda is distinct from the present invention in that Yacenda is the actual lottery. Indeed, the present invention could be used in combination with a system such as Yacenda.

Applicants submit that Yacenda does not disclose each and every element in the present invention as required by 35 U.S.C. § 102 (e), specifically, the element "lottery pool" as claimed in independent claims 1, 15, 23, and 30, of the current invention. Applicants respectfully request that the Examiner state with specificity where the reference teaches the element of a "lottery pool" or in the alternative, withdraw the § 102 (e) rejection of anticipation by Yacenda and allow

the independent claims. Since claims 2-8, 10-14, 16, 20, 24, 27, 31-37, and 39-43, depend on the independent claims, allowance of the independent claims will result in the allowability of the dependent claims.

Claims 9, 21, 28, and 38, under 35 U.S.C. §103(a) and Luciano et al.

The Examiner has rejected claims 9, 21, 28, and 38, as obvious under § 103 (a) making the claims unpatentable over *Luciano et al.* (U.S. Patent No. 6,168,521). In the Office Action, the Examiner stated the following:

> "Regarding claims 21 and 28, Luciano teaches all the limitations of the claims as discussed above. Luciano further teaches the display of results so as to add excitement to the game (see last sentence of abstract). It would have been obvious to a person of ordinary skill in the art at the time of the invention to modify this concept taught by Luciano to further include the highlighting of matches to increase the excitement and to add an aesthetic appeal that would attract players to the lottery game.
>
> Regarding claims 9 and 38, Luciano teaches all the limitations of the claims as discussed above. While Luciano teaches the feature of replaying the ticket in a future lottery (abstract), Luciano is silent regarding the feature of notifying the player of an updated jackpot amount. It would have been obvious to a person of ordinary skill in the art at the time of the invention to include this feature in Luciano to increase the player's anticipation of winning larger jackpots in the future."

To establish a prima facie case of obviousness there must be: (1) some suggestion or motivation either in the reference itself, or within the knowledge generally available to one of ordinary skill in the art, to modify the reference; (2) a reasonable expectation of success; and (3) a teaching or suggestion in the prior art reference of all of the claim limitations (MPEP § 2143). Additionally, the teaching or suggestion to make the claimed combination, and the reasonable expectation of success, must be found in the prior art, not in the applicants' disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

The Applicants respectfully submit that the Examiner has not met the basic criteria for establishing a prima facie case of obviousness with the Luciano reference under 35 U.S.C. § 103 (a). In a recent case from the Federal Circuit where an Examiner rejected the Applicant's case

summarily based on what he subjectively believed to be "well known in the art" without identification of any specific teaching, suggestion, or motivation in any reference, the Court ruled that the rejections were improper. *See In re Thrift*, 2002 WL 1830720 (Fed. Cir. Aug. 9, 2002). Specifically, the Federal Circuit explained:

> [T]he Board's reliance on "common knowledge and common sense" did not fulfill the agency's obligation to cite references to support its conclusions. Instead, the Board must document its reasoning on the record to allow accountability. This documentation also allows effective judicial review. *In re Thrift*, supra, at 6 (internal citations omitted).

The Federal Circuit went on to explain:

> We agree with appellants that the Board's ground of rejection is simply inadequate on its face. The Board sustained the examiner's very general and broad conclusion of obviousness based on his finding that "[t]he use of grammar is old and well known in the art of speech recognition as a means of optimization which is highly desirable." . . . The Board's decision is not supported by substantial evidence because the cited references do not support each limitation of claim 11. . *In re Thrift*, supra, at 7 (internal citations omitted).

The Applicants submit that the situation regarding the current invention is analogous to the situation in the *Thrift* application. The Examiner cites no specific evidence other than "...it would have been obvious to a person having ordinary skill in the art..." Accordingly, the Applicants respectfully submit that the rejections of the Examiner under 35 U.S.C. § 103 are, under the standard established by the Federal Circuit, insufficiently supported by the objective evidence.

Unless the references teach or suggest all claim limitations, there can be no prima facia case of obviousness. MPEP § 2143.03. Therefore, if an independent claim is nonobvious under 35 U.S.C. § 103, then any claim depending there from is nonobvious. MPEP § 2143.03; *In re Fine*, 837 F.2d 1071 (Fed. Cir. 1988). For the reasons stated above, Applicants respectfully submit that the cited references do not disclose, teach, or suggest all of the elements of the independent claims 1, 15, 23, and 30. Specifically, the current invention claims a "lottery pool, [where] individuals generally get several lottery tickets together to create a larger pool of potentially winning numbers for a group." (Background paragraph [0005], page 3, lines 8-11)

and not a lottery type system as taught by Luciano.

In *In re Zurko*, 258 F.3d 1379 (Fed. Cir.2001), the Court stated that in order to support an obviousness rejection there must be "some concrete evidence in the record to support [the] findings." The Examiner is therefore respectfully requested to furnish specific evidence for the teaching of all of the elements of the present invention, or in the alternative, to withdraw the rejections based on § 103 (a).

Claims 17-18, and 25, under 35 U.S.C. § 103 (a) and Yacenda

The Examiner has rejected claims 17-18, and 25, as obvious under § 103 (a) making the claims unpatentable over *Yacenda* (U.S. Patent No. 6,322,446). In the Office Action, the Examiner stated the following:

> "Regarding claim 17, Yacenda teaches all the limitations of the claims as discussed above. While Yacenda teaches the electronic notification {online} (col. 3, lines 59-60), Yacenda is silent on the particular means of electronic notification. The examiner takes official notice that it is well known in the art to use e-mail as a form of online communication. It would have been obvious to a person of ordinary skill in the art at the time of the invention to incorporate e-mail notification in Yacenda to make the process of winner notification quicker and more convenient for the player; whereby the player would not have to track the winning outcome(s) him/herself.
>
> Regarding claims 18 and 25, Yacenda teaches all the limitations of the claims as discussed above. Yacenda further teaches the monitoring of the time remaining (Fig. 3, #201). However, Yacenda is silent regarding alerting the participants of time remaining before the lottery closes. It would have been obvious to a person of ordinary skill in the art at the time of the invention to incorporate this feature in Yacenda to allow the participant a fair opportunity to choose lottery picks before being disqualified."

The Applicants submit that the Examiner has not met the basic criteria for establishing a prima facie case of obviousness with the Yacenda reference under 35 U.S.C. § 103 (a). The Applicants state that the situation regarding the current invention is similar to the situation in the *Thrift* application and similar to the situation established by the prior § 103 (a) rejection in view of Luciano. The Examiner relies on the statement "It would have been obvious to one of

ordinary skill in the art..." rather than furnish specific evidence of obviousness. Therefore, the Applicants respectfully submit that the objective evidence insufficiently supports the rejections of the Examiner under 35 U.S.C. § 103 in view of Yacenda.

For reasons stated above, Applicants submit that the cited references do not disclose, teach, or suggest all of the elements of independent claims 1, 15, 23, and 30. Specifically, the current invention is directed toward a "lottery pool, [where] individuals generally get several lottery tickets together to create a larger pool of potentially winning numbers for a group." (Background paragraph [0005], page 3, lines 8-11) and not the facilitation of a lottery type system as taught by Yacenda.

The Examiner is respectfully requested to furnish specific evidence for the teaching of all of the elements of the present invention, or in the alternative, to withdraw the rejections based on § 103 (a) under Yacenda.

Claims 19 and 26, under 35 U.S.C. §103(a) and Yacenda in view of Luciano

The Examiner has rejected claims 19 and 26, as obvious under § 103 (a) making the claims unpatentable over *Yacenda* (U.S. Patent No. 6,322,446) in view of *Luciano et al.* (U.S. Patent No. 6,168,521). In the Office Action, the Examiner stated the following:

> "Regarding claims 19 and 26, Yacenda teaches all the limitations of the claims as discussed above. Yacenda is silent regarding the feature of alerting the winner with a varying color scheme. However, in an analogous lottery system, Luciano teaches displaying the lottery results in such a manner as to provide the excitement (last sentence of abstract). It would have been obvious to a person of ordinary skill in the art at the time of the invention to enhance the display or results of Yacenda, as taught by Luciano, and to further enhance both Yacenda and Luciano by providing a color output to increase the excitement of the game and to add an aesthetic appeal that attracts players."

Applicants respectfully disagree with the Examiner's statement. The cited references fail to meet all of the § 103 (a) criteria listed above. Specifically, the references do not teach or suggest all of the claim limitations of the claimed invention, in any combination. One element not taught is the element "lottery pools," existing in all independent claims of the current invention. Also, the references may be analogous to each other but do not relate to the claims of

the current invention for reasons previously given. Lottery systems and the facilitation of lottery systems do not teach the creation and management of lottery pools, a subject matter which interacts with lottery systems but which is not in itself a lottery system.

The Examiner is therefore respectfully requested to furnish specific evidence for the teaching of all of the elements of the present invention, or in the alternative, to withdraw the rejections based on § 103 (a).

CONCLUSION

In light of the foregoing, Applicants respectfully submit that the application is in allowable form. It is believed that no additional fees are due at this time. If this is incorrect, Applicants hereby authorize the Commissioner to charge any fees, other than issue fees, that may be required by this paper to Deposit Account 07-0153. The Examiner is respectfully requested to call the undersigned for any reason that would advance the current application to issue. Please reference Attorney Docket No. 122923-1000.

Respectfully submitted,
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VERSION WITH MARKINGS TO SHOW CHANGES MADE

In the Specification: ✓

The present invention provides for a lottery pooling management system. The lottery pooling management system may include a participant interface, lottery interface, and notification interface. The participant interface may be in communication with a participant computer[, the participant interface may be] and configured to allow pool participants to participate in one or more lottery pools with each lottery pool having one or more sets of lottery numbers. [The lottery pooling management system may also include a lottery interface.] The lottery interface may be in communication with one or more lotteries and the participant interface, [the lottery interface may be] and configured to ascertain drawing results and jackpot amounts for the [one or more] lotteries and to compare the drawing results with the [one or more] sets of lottery numbers in the [one or more] lottery pools. [The lottery pooling management system may further include a notification interface.] The notification interface may be in communication with the participant interface and the lottery interface, [the notification interface may be] and configured to alert pool participants about activity in the [one or more] lotteries, the status of the lottery pool, and the compared drawing results.